

Adaptive Bidding Increments in an Online Auction System
Application No. 09/695,551
Atty.Dkt.: 1009-04-01

REMARKS

Reconsideration of the above referenced application is hereby requested. Claims 1-11 and 14-26 remain pending. Applicant's attorney has amended Claims 1 and 15 to more particularly define the instant invention and cancelled Claims 12 and 13.

Formal Objection to Claims

The Examiner has objected to Claim 1 on the basis that it ends with a semicolon, rather than a period. The Applicant has amended Claim 1 accordingly.

Indefiniteness Rejection of Claims

Claims 1-14 are objected to by the Examiner on the basis that they fail to particularly point out and distinctly claim the subject matter which the Applicant regards as inventive. Specifically, Claim 1 step iii) uses the term "including". The Applicant has not amended Claim 1 to read "inducing" rather than "including".

Anticipation Rejection of Claims

The Examiner objects to previous Claims 1-4, 7, 9-21, 23-24 and 26 on the basis that the basis of 35 U.S.C. 102(e) as being anticipated by US 2002/002303.

The Applicant respectfully submits that US 2002/002303 was not filed prior to the filing of the present application. It is only the priority application, provisional application no. 60/168,816 filed on Dec. 3, 1999 which preceded the present filing of the application and which is different from the publication US 20002/002303, and therefore, the Applicant respectfully submits that the proper document to use as a basis for either anticipation under 35 U.S.C. 102(e) or obviousness under 35 U.S.C. 103(a) is the content and teachings of the provisional application.

Provisional application *Fritsch* discloses a system that's object is to allow users of the system to be both buyers and sellers. An object of the disclosed system is to provide a "2-dimensional transaction" wherein a user can be buying an item at one price and simultaneously sell the item at a higher price. Users of the online auction would be provided with a graphical interface that displays their current sell bid amount 320 for which they are offering to sell an object and a current bid to buy amount 370 for which a person is currently bidding for an object. The graphical interface also is disclosed as having a sell bid selector 310 and a buy bid selector 360, and this sell bid selector 310 and buy bid selector 360 is how "[n]umerical price changes and the price spread between bid and ask are displayed graphically. Page 4, line 10-11 (Provisional Application).

The Applicant respectfully submits that independent Claims 1 and 15 are not anticipated by the *Fritsch* provisional application and that each and every element of the amended claims are not present or disclosed therein. Therefore the claims are not anticipated by the relied upon reference.

Fritsch does not disclose "inducing bidders to place a bid by selecting from said plurality of predetermined bid increments wherein selecting a predetermined bid increment simultaneously transmits details of said bid to said website system and records said bid in said website system, and wherein the amount of a bid is the current auction price plus the selected predetermined bid increment". Rather, *Fritsch* discloses that a user must move a screen cursor to the incremental level upon the buy bid selector 360 which represents the user's desired bid. The user must then indicate that she would like the buy bid selector 360 to indicate a new bidding value. Once the user has selected one of these new bid amounts, the bid is not transmitted to the website system. *Fritsch* discloses that selecting a new bid amount of the bid selector 360 will cause a new bid amount to be shown at 390. A user of a system as disclosed by *Fritsch* must then finalize entry of the new bid amount shown in 390 by moving the cursor to the buy bid submit button 400 and clicking on this buy bid submit button to submit a bid for the amount shown in 390. Selection of a new bid amount on the bid selector 360 only alters the new bid amount 390 indicated. It does not "simultaneously [transmit] details of said bid to said website system" Page 4, line 10-11 (Provisional Application) A user of a system as disclosed by *Fritsch* must still click on the buy bid submit button 400 to submit the new bid shown in the new bid amount 390, if a user does not click on the buy bid submit button 400, the bid will never be transmitted.

Obviousness Rejection of Claims

The Examiner objects to Claims 5-6, 8, 22 and 25 under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al.* in view of US 6,230,147 *Alaia et al.*

The Applicant respectfully submits that the two references cannot be combined to result in the claimed features as the Examiner suggests.

Claims 5, 8, 22 (now amended Claim 20) and 25 (now amended claim 25) all claim "wherein the preprogrammed condition is related to the passage of time between placement of bids".

Alaia is directed at a method and system for expanding the time of an auction past its initial ending point. As the Examiner points out, *Alaia* merely discloses the consideration of time in the bidding process. If a bid is received a specified time before the end of closing in an online auction, *Alaia* teaches that the online auction can be extended. *Alaia* therefore teaches that when a bid is received within a specified time of a closing of an online auction, this event can trigger an extension in the closing time of the online auction. *Alaia* in no way teaches altering bidding increments as a result of receiving bids in this specified time, in fact *Alaia* does not teach the altering of the bidding process in any way, merely that the time allowed to bid can be extended.

The Examiner suggests that it would be obvious to one of ordinary skill in the art at the time that the invention was made to modify *Fritsch* with consideration of timing as disclosed by *Alaia* to modify bid increments because this would allow auctioneers to improve bidding prices by using gradually smaller, more palatable price increases.

Adaptive Bidding Increments in an Online Auction System
Application No. 09/695,551
Atty.Dkt.: 1009-04-01

The Applicant respectfully submits that there is no teaching in *Fritsch* to suggest that bidding prices may be improved by using gradually smaller, more palatable price increases. *Fritsch* does not teach altering of the scale changes in order to induce more people to bid by using gradually smaller, more palatable price increase. Rather, *Fritsch*'s system of graphically representing a bid/ask spread, between the current bid and the current offered selling price, causes this bid/ask spread to decrease as the auction progresses. Because the bid/ask spread being graphically represented decreases, it would not be practical in all cases to keep the same bid increments shown. As suggested by the provisional application "Again, it is important to note that the same graphic is scaled accordingly throughout the process, which allows for easy visualization, whether the price spread is \$50.00 or \$50.00." Page 5, lines 13-15 (Provisional Application)

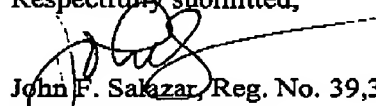
However, even should *Alaia* be combined with *Fritsch* in the manner suggested by the Examiner, the Applicant respectfully submits that the combination would not result in the "passage of time between placement of bids" being taken into account. *Alaia* teaches taking into consideration bids submitted within a predetermined time from the closing of the auction. (Col. 6, line 62 to Col 7, line 30). The interval of time between the placement of bids is not the same as bids submitted within a predetermined interval before the closing of the auction and the resulting combination would not consider timing in the same manner as claimed.

Alaia does not suggest how the event of receiving a bid within a closing time of an online auction can be used to alter a bidding process other than by extending the time to closing of an online auction, nor does *Fritsch* teach that it is desirable to reduce bidding increments near the end of an auction and therefore the Applicant respectfully submits that there is no suggestion in either *Alaia* or *Fritsch* that these two references can be successfully combined to result in the claimed feature of dependent Claims 5, 8, 22 (now amended Claim 20) and 25 (now amended claim 25). Furthermore, even if whether or not a bid was submitted within a predetermined interval of the closing of an auction as taught by *Alaia*, it would not result in the claimed features of "wherein the preprogrammed condition is related to the passage of time between placement of bids", because *Alaia* does not teach taking into consideration the time interval between the placement of bids.

Conclusion

Applicant's attorney urges that the instant application is now in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a collect call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,


John F. Salazar, Reg. No. 39,353
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, KY 40202
jsalazar@middreut.com